

ORDINANCE NO. _____ Series 2009

AN ORDINANCE AMENDING SECTIONS 156.005 AND 156.057 OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES [LMCO] RELATING TO CONTRABAND MANUFACTURE CONTAMINATED PROPERTY AND OTHER CRIMINAL ACTIVITY CONSTITUTING A PUBLIC NUISANCE.

Sponsored by: Councilwoman Madonna Flood

NOW BE IT ORDAINED by the Louisville/Jefferson County Metro Council as follows:

SECTION I: The definition of methamphetamine contaminated property in LMCO

Section 156.005(e) is hereby amended to read as follows:

METHAMPHETAMINE CONTRABAND PRODUCTION; CONTRABAND PRODUCTION CONTAMINATED PROPERTY. Any structure or premises which has been identified through scientific evidence by law enforcement; or federal, state, or local government health department; or federal, state or local government agency for environmental protection; to be contaminated with chemical residues as a result of **CONTRABAND PRODUCTION**, defined as the manufacture of methamphetamine, lysergic acid diethylamide [LSD], phenylcyclohexypiperidine [PCP], 3,4-methylenedioxymethamphetamine [MDMA, or ecstasy], or with the hydroponic cultivation of cannabis [marijuana], when such property has not been decontaminated. For the purposes of this chapter, methamphetamine contraband production contamination renders a property to be unsanitary; unsafe and unfit for human habitation, occupancy, or use; and dangerous to life, health or safety.

SECTION II. LMCO Section 156.057 is hereby amended to read as follows:

§ 156.057 PUBLIC NUISANCE.

(A) Criminal activity as a public nuisance.

(1) *Definitions.* For the purposes of this section, ***PUBLIC NUISANCE*** shall mean:

(a) any ~~methamphetamine~~ contraband production contaminated property; or

(b) a any premise or place where law enforcement officers have, on more than one occasion in the preceding 12-month period, criminally cited or arrested persons for violations of the law governing prostitution, gambling, the sale or use of alcoholic beverages on or from either licensed or unlicensed premises, trafficking in marijuana or any controlled substances, or any felony offense provided under KRS Chapter 218A.

(2) Unlawful use of property. No owner of residential, commercial or vacant property located in Louisville Metro shall allow his or her property to be used as the site for any public nuisance after having received notice pursuant to this chapter that the property has been used for the commission of a public nuisance. A legal or equitable owner of such property is deemed to have knowledge of such activity upon receipt of the notice as set forth in this chapter.

(a) No person or owner shall destroy, remove or deface any order or notice posted by the code official.

(b) No person or owner shall disobey any order issued by the Code Official, or use or occupy or permit any other person to use or occupy any premises ordered closed by the Code Official.

(3) Duties of Louisville/Jefferson County Metro Government Agencies.

(a) Duty of Police.

(1) The Louisville Metro Police Department shall no later than 30 days after criminally citing or arresting persons for violations of the law governing prostitution, gambling, the sale or use of alcoholic beverages on or from either licensed or unlicensed premises, trafficking in marijuana or any controlled substances or any felony offense provided under KRS Chapter 218A, notify the Code Official in writing of the specific violation investigated, the address of the property on or in which the violations occurred, and the circumstances of the violation.

(2) Should the Metro Louisville Police Department have reason to believe that a property where no citations or arrests have occurred has been used for contraband production as defined in this ordinance, the Department shall immediately notify the Code Official and the local health department.

(b) Duties of local health department. Immediately upon receipt of a report that a ~~methamphetamine~~ contraband production contamination notice has been posted on a property and upon a finding by scientific testing that the property is contaminated with chemical residues as a result of ~~the manufacture of methamphetamine~~ contraband production, the Louisville Metro Public Health and Wellness Department shall immediately notify the Code Official responsible for enforcement of this chapter by fax, mail, or email.

(c) Notification. In the instance of ~~methamphetamine~~ contraband production contamination of a property, the Louisville Metro Public Health and Wellness Department shall notify the Code Official responsible for the enforcement of this chapter at the time of:

1. The demolition of the property; or
2. The receipt of certification of compliance with ~~methamphetamine~~ decontamination regulations from the appropriate certifying state

agency. Any such notice to property owners shall be by certified mail return receipt requested.

(4) Notice. Whenever the Code Official receives information that a public nuisance exists in or upon residential, commercial or vacant property, he shall notify the owner that the property is a public nuisance and that the public nuisance must be abated. Such notice shall be provided as set forth in this chapter. Provided, however, that when notice is mailed, it shall be mailed by certified mail, return receipt requested.

(5) Abatement. Should the public nuisance not be abated at the time stated in the notice, or any extension granted by the hearing officer(s), the Code Official shall be authorized at any time thereafter to issue an order closing and vacating the premises to the extent necessary to abate the public nuisance. Such closing and vacating shall be for such period as the Code Official reasonably may direct, but in no event shall the closing and vacating be for a period of more than one year from the date of the closing. A closing and vacating ordered by the Code Official, pursuant to this subchapter is not an act of possession, ownership or control by the Metro Government. A close and vacate order of the Code Official will be rescinded within 14 days of an abatement unless such premises is the site of repeated close and vacate orders.

(a) If the premises consist of multi-unit dwellings or mixed uses and the public nuisance has occurred solely within a unit or units, the authority to close and vacate is restricted to the unit or units in which the public nuisance has occurred, and does not extend to any other unit in the premises.

(b) Upon the issuance of any order provided for in this section, a copy of the order shall be served on the owner of the property in the same manner as

the notice provided for in this chapter, and a copy shall be conspicuously posted on the property.

(c) If any person or owner fails to comply with an order to close and vacate issued pursuant to this subsection, the Code Official may:

1. Discontinue the furnishing of utility service by Metro Government to the premises at which the nuisance exists;

2. Prohibit the furnishing of utility service, to include but not limited to gas, electric, water, and heating oil, to the premises by any public utility holding a franchise to use the streets and public ways of the Metro Government;

3. Revoke the certificate of occupancy of the premises;
or

4. Use any other legal remedy available under the laws of the state.

(d) Pursuant to the provisions of KRS 381.770, the Metro Government shall possess a lien against the property for all fines, penalties, charges and fees imposed and for the reasonable value of labor and materials used to abate the public nuisance. The lien shall be superior to and have priority over all other liens on the property except state, Metro Government, school board and Metro Government taxes, and may be enforced by judicial proceeding.

(6) Eviction as a defense.

(a) It shall be a defense to a violation of this section if the owner has instituted an eviction proceeding within 30 days against the offending tenant and all occupants of the premises, and completes the eviction within 75 days of commencement or as soon thereafter as court procedures allow. In the event that judicial or quasi judicial proceedings prohibit an owner from proceeding with an eviction,

abatement of the public nuisance by eviction will be stayed until the judicial or quasi-judicial proceeding is resolved.

(b) In the case of multi-unit dwellings, the only parties necessary to name in an eviction proceeding are the occupants of the actual unit involved with the activity suspected, or the occupants suspected of the activity described in the notice.

(7) Other defenses. It shall be a defense to a violation of this section if the violations described in subsection (A)(1) of this section:

(a) Were committed by persons other than the owner, his/her employees, agents, or lessees; and

(b) Upon such time as the owner knew or should have known of the violations reasonable steps were taken to abate the violations by removing the offender, notifying police of the violation(s), or securing vacant property.

(8) Relief from order. The Code Official may vacate or suspend the provisions of an order to close and vacate upon a showing by clear and convincing evidence that the public nuisance has been abated and will not be maintained or permitted in any unit of the premises.

(9) Abatement actions not in violation of law. Actions taken by an owner to abate a public nuisance as defined in this section shall not be deemed to be violations of Fair Housing or Landlord-Tenant laws.

SECTION III: EFFECTIVE DATE This ordinance shall take effect upon its passage and approval.

Kathleen J. Herron
Metro Council Clerk

David W. Tandy
President of the Council

Jerry E. Abramson
Mayor

Approved: _____
Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____

Public Nuisances - Chapter 156 amendments - Draft 1 – roc/wtw
Public Nuisances - Chapter 156 amendments - Draft 2 – roc/wtw
Public Nuisances - Chapter 156 amendments - Draft 3 – roc/wtw

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